THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITON NO.5925 OF 2006

Dt.28-03-2006

Between:

The Commissioner for Cooperation &
Registrar of Cooperative Societies,
Andhra Pradesh, Hyderabad and another

.... Petitioners

A n d

Sri K.Narayana, Junior Assistant (Retd.),
O/o the Divisional Cooperative Officer,
Bodhan and another.

.... Respondents

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
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O R D E R:(*Per JC,J)*

Aggrieved by an order dated 14-11-2005 in O.A.No.614 of 2005, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"), the respondents filed the present writ petition.

The first respondent herein was initially an employee of the District Cooperative Marketing Society, Nizamabad. It appears

that in the year 1998, the said Society went into liquidation. The services of the first respondent were put to an end by way of retrenchment. The Government of Andhra Pradesh in cooperation Food and Agriculture Department issued G.O.Rt.No.425 on 13-06-1989. From the said Government Order, it appears that 140 Primary Agricultural Cooperative Societies and 5 District Cooperative Marketing Societies, whose financial position was unsatisfactory and were also found incapable of rendering the required services, were liquidated and the above mentioned Society i.e., District Cooperative Marketing Society, Nizamabad was one of them. The Government also took note of the fact that consequent upon the liquidation of the societies, the employees working in the respective societies with considerable service were retrenched from service. After taking note of the above-mentioned facts, the Government took a decision as follows:

> "The Government have examined the proposal in all aspects sympathetically and direct that the Employment Exchange procedure and the qualification prescribing the age limit for recruitment employment be relaxed in favour of the retrenched employees of the above mentioned liquidated District Cooperative Marketing Societies as detailed in the annexure appended to this order to enable the Commissioner for Cooperation and Registrar of Cooperative Societies to take necessary action for their speedy absorption elsewhere."

The tenor of the said order, in our opinion, is a classic example of equivocation. We say so because it was argued before us by the learned Government Pleader that the Government Order does not give any categorical assurance of absorption of the retrenched employees into Government Service. The submission of the learned Government Pleader perhaps has some justification. The language of the said Government Order certainly is not

categorical. It leaves sufficient gaps for anybody to read whatever he pleases regarding the said Government Order. However the last two lines of para 3;.....*to enable the Commissioner for Cooperation and Registrar of Cooperative Societies to take necessary action for their speedy absorption elsewhere*, in our view, is conclusive enough to understand that the Government decided to absorb the retrenched employees into Government Service.

Notwithstanding the issuance of the Government Order, the case of the first respondent was not considered for absorption for quite some time. Eventually, he approached this Court by way of W.P.No.4875 of 1998 which, in substance, came to be allowed by an order dated 13-12-1999. The operative portion of the order reads as follows:

> "In the circumstances, the writ petition is disposed of with a direction that the respondents have to assess the availability of vacancies and absorb the petitioner in the suitable post, as was done in the case of other employees of the same marketing society. In case, the vacancies are not available, it is made clear that as and when vacancies occurs, the case of the petitioner shall be considered first before considering the case of any other person under the retrenched category. This exercise shall be done within a period of two months from the date of receipt of a copy of this order. No costs.
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> It is also brought to the notice of this Court that one Mr.A.Sanjeeva Reddy who has been retrenched from the marketing society was absorbed in the Cooperative Department in Nizamabad on 10-06-1999 as a Junior Assistant. There is no reason why the petitioner could not be considered for that post. Be that as it may as fresh directions are being issued in this writ petition. I need not record any finding on this aspect."

The said order in turn refers to an earlier order of this Court in W.P.No.1360 of 1988, wherein the first respondent and some

other retrenched employees of the Society referred to above approached this Court seeking appropriate directions to the respondents therein for absorption into the Government Service. It appears that the said writ petition was also allowed and subsequently, unsuccessfully, challenged by the respondents in W.A.No.1506 and 1524 of 1992.

Insofar as the order in W.P.No.4875 of 1998 is concerned, the respondents therein, who are none other than the first petitioner and second respondent herein, carried the matter in appeal in W.A.No.673 of 2000. The said writ appeal was dismissed by an order of this Court dated 29-06-2000.

Left with no other option, it appears that the services of the first respondent was absorbed by the State of A. P in the Department of Cooperation as Junior Assistant on 23-08-2000. The respondent retired on 30-09-2003.

The Commissioner for Cooperation and Registrar of Cooperative Societies made a proposal to the Government seeking condonation of the break period of service from 01-07-1988 to 26-08-2000 and also for counting the service rendered by the first respondent in the liquidated society i.e., from 01-07-1967 to 30-06-1988, for computing his retirement benefits. The said proposal was rejected by the Government of A.P. by proceedings of the Principal Secretary to Government dated 01-01-2005. Challenging the said proceedings, the first respondent approached the Tribunal by way of O.A.No.614 of 2005. The prayer in the O.A is as follows:

> "It is therefore prayed that this Hon'ble Tribunal may be pleased to call for the records relating to the impugned Government Memo.No.17011/Coop.II(2)/ 04, Agril. & Coop.,

dt.1-1-2005 and its connected orders in RC.No.35568/2004/E10 dt.3-1-2005 issued by the Commissioner for Cooperation and Registrar of Cooperative Societies, A.P.Hyderabad and quash the same as illegal, arbitrary, discriminatory, unjust and violative of Articles 14, 16 and 21 of the Constitution besides being opposed to all cannons of justice, equity and fair play and hold that the applicant is entitled for condonation of break period of service from 1-7-1998 to 26-8-2000 for the purpose of counting the past service rendered in D.C.M.S., Nizamabad and entitled for pension and other retiremental benefits on that basis on par with similarly situated persons along with penal interest and exemplary costs and pass such other and further orders as this Hon'ble Tribunal may deem fit."

Interestingly, the Government is not made a party respondent to the O.A. More interestingly, objection on that count is never raised by anyone of the other respondents and we will be missing further interest, if we do not mention that of all the three respondents before the Tribunal, only two are the appellants and the first respondent before the Tribunal being the District Collector, Nizamabad, for some inexplicable reason, is arrayed as a respondent in the writ petition. All this demonstrates only the twilight of procedural law. We learn to live with it.

The Tribunal, of course, allowed the O.A on the ground that one Mr.P.Malla Reddy, who is similarly placed as that of the first respondent herein, was given the benefit of his past service by the State in G.O.Rt.No.2, dated 08-01-2002. A copy of the said G.O is also filed in the material papers, which reads as follows:

"In his letter 1st read above, Sri P.Malla Reddy, who is presently working as Junior Assistant, in the O/o the District Consumer Disputes Redressal Commission, Nizamabad has represented to the Registrar, A.P.State Consumer Disputes Redressal Commission, Hyderabad, stating that he has entered into service on 22-1-1966 in District Cooperative Marketing Society, Nizamabad and retrenched from service on 21-7-1988, as the

District Cooperative Marketing Society, Nizamabad was liquidated. Subsequently, Government have issued orders in G.O.Ms.No.425, Food and Agriculture (Coop.III) Department, dated 13-6-1989 for absorption of the retrenched employees of District Cooperative Marketing Society Limited, Nizamabad. As per these orders the individual was allotted to District Consumer Forum, Nizamabad through the proceedings issued by the District Collector, Nizamabad, vide A2/7644/93, dated 29-01-1996, and accordingly, he joined as Junior Assistant in the said office on 5-2-1996. He has further stated that, he has been awarded pay scale of Rs.1745-3420 and his pay was fixed at the minimum of Rs.1745/- per month. Sri P.Malla Reddy, Junior Assistant has requested to protect his pay as per G.O.Ms.No.1002, General Administration (Services–A) Department, dated 29-11-1967 on the same lines as was given in the case of Sri G.Venkat Reddy formerly employee of District Cooperative Marketing Society, Nizamabad who is presently working as Junior Assistant in A.P.Social Welfare Residential Education Institution (School), Armoor.

2. In his letter 2nd read above, while forwarding the representation of the individual, the Registrar, A.P.State Consumer Disputes Redressal Commission, Hyderabad has requested the Government for issue necessary orders in the matter.

3. The proposal of the Registrar, A.P. State Consumer Disputes Redressal Commission, Hyderabad has been examined by the Government in detail in terms of G.O.Ms.No.1002, General Administration (Services-A) Department, dated 29-11-1967 read with item (c) of letter No.341/68-3, General Administration (Services-A) Department, dated 27-5-1968 to 4-2-1996 from the date of retrenchment to the date of joining is condoned, in terms of sub-para (iii) of G.O.Ms.No.1002, General Administration (Services-A) Department, dated 29-11-1967, the period of former qualifying service at the time of retrenchment will be linked with the period of subsequent qualifying service as re-absorption for the purpose of pension and the service will be reckoned as continuous service for the purpose of pension.

4. The Registrar of A.P. State Consumer Disputes Redress Commission, Hyderabad is directed to fix the pay of the individual by following the procedure prescribed at para 1(i) of G.O.Ms.No.1002, General Administration (Services-A) Department, dated 29-11-1967.

5. The Service Register of the individual is returned to the Registrar, A.P.State Consumer Disputes Redressal Commission,

Hyderabad for taking necessary action in the matter. He is requested to acknowledge its receipt.

6. This order issues with the concurrence of Finance (FR-II) Department, vide their U.O.No.40151/689/A1/FR.II/2001, dated 24-12-2001."

The validity of G.O.Rt.No.2 is not questioned before us. Whether the logic in the said G.O., for conferring the said benefit on the above-mentioned Mr.Malla Reddy is right or wrong is not an issue before us. The fact remains that the Government took a decision to treat the former service of the above-mentioned Malla Reddy, rendered in the Cooperative Society, from whose service he was retrenched, as qualifying service, though it is rather difficult to understand what is the exact purport of para 3 of the said G.O., and what is the decision supposed to have been taken by the State. The fact that there is a categorical assertion by the respondent that Malla Reddy was similarly situated to that of the respondent and in his case, the benefits sought for by the petitioner in the O.A were, in fact, given in the above G.O., was accepted by the Tribunal.

In the circumstances, the Tribunal rightly came to the conclusion that denying the benefit such as the one sought by the first respondent, while similar benefits were granted in case of another person (Malla Reddy), who is found by the Tribunal as similarly situate as the first respondent, would amounts to clear arbitrary exercise of power on the part of the State and, therefore, obviously, violative of Article 14 of the Constitution of India.

We, therefore, see no reasons warranting interference with the order under challenge by this Court in exercise of the discretionary jurisdiction under Article 226 of the Constitution of India.

Writ petition is, therefore, dismissed at the admission stage. No costs.

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J.CHELAMESWAR,J

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M.VENKATESWARA REDDY,J

Dt.28-03-2006
Lrkm.